

SENATE BILL 1898

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 5, relative to medical malpractice
insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 5, is amended by inserting sections 2 through 9 below as a new part thereto.

SECTION 2. As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of commerce and insurance.

(2) "Health care practitioner" means any health care practitioner licensed or certified under title 63, chapters 3, 6, 7, 9, and 19.

(3) "Medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of negligence or malpractice in rendering professional services by a health care practitioner.

SECTION 3. No insurer shall issue or sell a policy of medical malpractice insurance in this state unless the rates for such policy are approved by the commissioner.

SECTION 4. The commissioner shall review and approve or reject rates based on the following factors:

(1) Rates shall not be excessive or inadequate, nor shall they be unfairly discriminatory;

(2) No rate shall be held to be excessive unless the rate is unreasonably high for the insurance provided with respect to the classification to which the rate is applicable;

(3) No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance provided with respect to the classification to which the rate is applicable;

(4) Rates shall be based solely on Tennessee loss experience and not the insurance company's or the insurance industry's loss experiences in states other than Tennessee, unless the failure to do so jeopardizes the financial stability of the insurer; provided, however, that loss experiences related to the specific proposed insured occurring outside the state of Tennessee may be considered in allowing a surcharge to such insured's premium rate;

(5) Investment income or investment losses of the insurance company for the ten (10) year period prior to the request for rate approval may be considered in reviewing rates. Investment income or investment losses for a period of less than ten (10) years shall not be considered in reviewing rates. Industry-wide investment income and losses for the ten (10) year period prior to the request for a rate approval may be considered for any insurance company that has been authorized to issue insurance for less than ten (10) years;

(6) The geographic location of the practitioners;

(7) Inflation;

(8) Reasonable administrative costs of the insurer;

(9) Reasonable costs of defending claims against Tennessee health care practitioners;

(10) A reasonable rate of return on investment for the owners or shareholders of the insurer when compared to other similar investments at the time of the rate request;

(11) Any impact resulting from any state or federal legislation regarding tort law or medical malpractice insurance that directly or indirectly affects medical malpractice insurance rates, using generally accepted actuarial techniques and standards; and

(12) Any other factors determined to be reasonable by the commissioner.

SECTION 5. Rate approval requests may be approved or disapproved by comparison with any category, subcategory or subspecialty of the health care industry that the commissioner determines to be reasonable.

SECTION 6. The insurer may charge any reasonable additional premium or grant any reasonable discount rate to any particular health care practitioner based on the following criteria:

- (1) Loss experiences;
- (2) Training and experience;
- (3) Number of employees of any insured entity;
- (4) Availability of equipment, capital, or hospital privileges;
- (5) Loss prevention measures taken by the insured;
- (6) The number and extent of claims not resulting in losses;
- (7) The specialty or subspecialty of health care practitioners; and
- (8) Any other factors determined to be reasonable by the commissioner.

SECTION 7.

(a) The commissioner shall approve or disapprove any rate application within sixty (60) days, unless an extension is required by the commissioner, for a period to be determined by the commissioner, due only to the applicant's failure to timely provide requested information.

(b) If a rate application is rejected, the applicant shall be notified in writing of the rejection and the rate the commissioner has determined to be justified. The applicant

may, within fifteen (15) days of receiving the notice, request an administrative appeal of the commissioner's determination. The administrative appeal shall conform to all requirements of the administrative procedures act, found at title 4, chapter 5.

SECTION 8. The commissioner shall provide the governor and the general assembly with a report as to the increases or decreases of the rates approved pursuant to this section and the number of requests disapproved pursuant to this section no later than February 15 of each year.

SECTION 9. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 10. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2006, the public welfare requiring it.